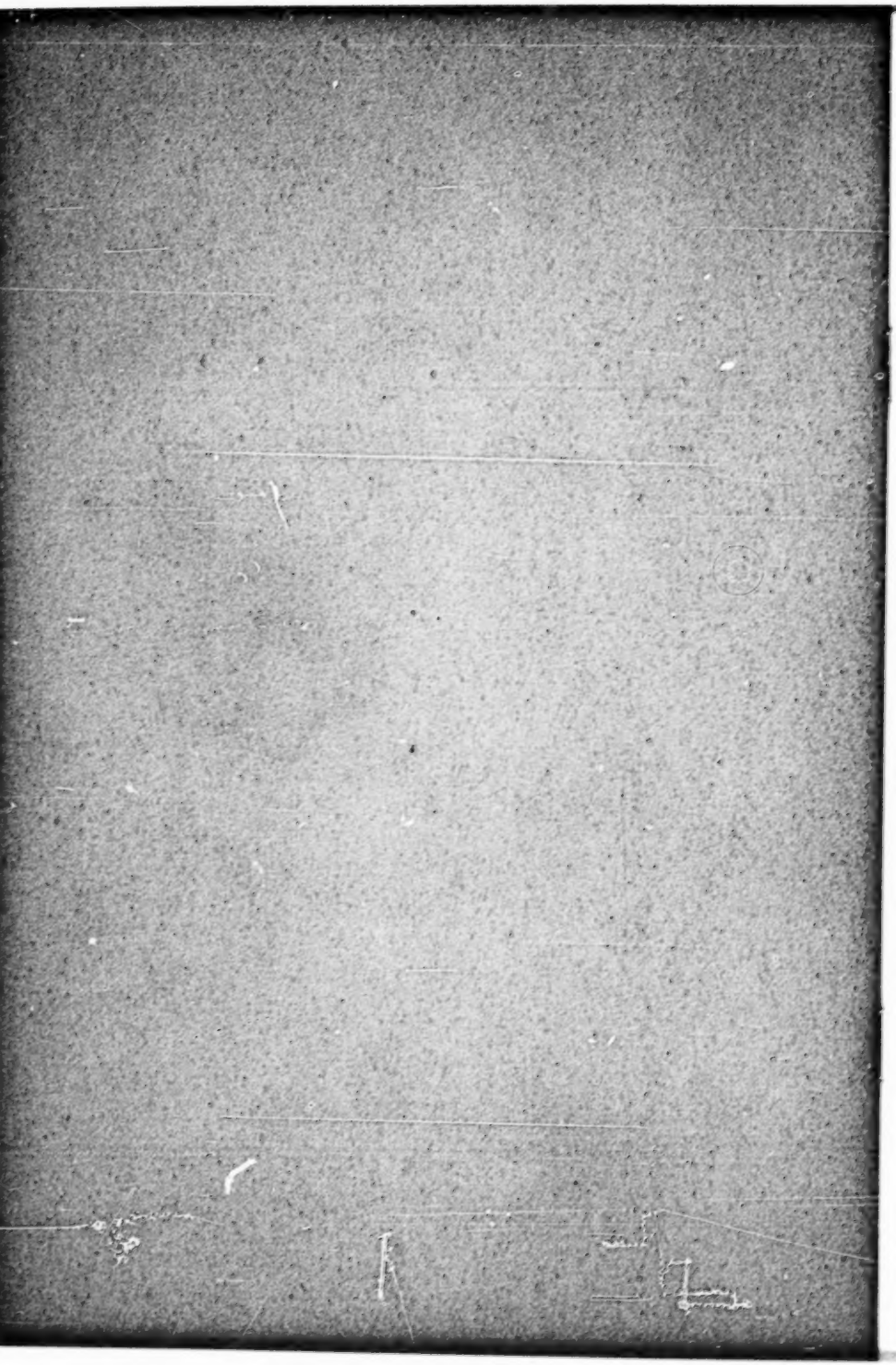

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974.

No. 74-68

CLARION CORPORATION,

Petitioner,

vs.

AMERICAN HOME PRODUCTS CORPORATION, LEHMAN BROTHERS, and RICHARD F. WATT, et al.,

Respondents.

BRIEF OF RESPONDENTS RICHARD F. WATT, JOHN M. BOWLUS, AND RUSSELL WOODY IN OPPOSITION.

LIONEL GROSS,
ROGER B. HARRIS,
Attorneys for Respondents Richard F. Watt, John M. Bowlus and Russell Woody.

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Respondents, Richard F. Watt, John M. Bowlus, and Russell Woody, Appellees below, respectfully state that the decision of the Court of Appeals for the Seventh Circuit is correct, that there are no reasons for review by this Court, and that the Petition for a Writ of Certiorari should therefore be denied.

OPINIONS BELOW.

The opinion of the Court of Appeals for the Seventh Circuit entered on April 2, 1974 (App. A to the Petition) is reported at 494 F. 2d 860 (1974). The earlier opinion of the Court of Appeals, entered on June 30, 1972 (App. D to the Petition), is reported at 464 F. 2d 444 (1972).

JURISDICTION.

The jurisdictional requisites are adequately set forth in the Petition.

QUESTION PRESENTED.

The "Question Presented" section of the Petition (pp. 2-3) reflects Petitioner's skewed view of what was before the Court of Appeals, both in 1972 and in 1974. Actually, what is now involved in the case may be stated as follows:

> Did the District Court—for the purposes of enforcing its adjudication of an attorneys' lien under the applicable Illinois statute, an adjudication affirmed by the Court of Appeals—properly enter a judgment pursuant to Rule 70 of the Federal Rules of Civil Procedure, divesting Petitioner of all right, title, and interest in a sum of money ($20,486.21) in the hands of Respondent American Home Products Corporation and vesting title to that sum in Respondent attorneys?

RULE AND STATUTE INVOLVED.

Rules 70 of the Federal Rules of Civil Procedure reads as follows:

> RULE 70. JUDGMENT FOR SPECIFIC ACTS; VESTING TITLE If a judgment directs a party to execute a conveyance of land or to deliver deeds or other documents or to perform any other specific act and the party fails to comply within the time specified, the court may direct the act to be done at the cost of the disobedient party by some other person appointed by the court and the act when so done has like effect as if done by the party. On application of the party entitled to performance, the clerk shall issue a writ of attachment or sequestration against the property of the disobedient party to compel obedience to the judgment. The court may also in proper cases adjudge the party in contempt. If real or personal property is within the district, the court in lieu of directing a con-

veyance thereof may enter a judgment divesting the title of any party and vesting it in others and such judgment has the effect of a conveyance executed in due form of law. When any order or judgment is for the delivery of possession, the party in whose favor it is entered is entitled to a writ of execution or assistance upon application to the clerk.

The text of the Illinois attorneys' lien statute, Illinois Revised Statutes, Chap. 13, Section 14, is set out in Appendix C to the Petition.

STATEMENT OF THE CASE.

The Statement of the Case in the Petition (pp. 4-32) fails "to present with accuracy, brevity, and clearness whatever is essential to a ready and adequate understanding of the points requiring consideration," as specified by Rule 23, subparagraph 4. As the Court of Appeals, in its second opinion, noted, Petitioner's President, Paul Klein, who appears here *pro se*, "explores in infinite detail a host of irrelevant matters but sheds no substantial light on what seems to be the crux" of his position. 494 F. 2d 860, 863 fn. 2. (App. A, p. 6 fn. 2).

Although the facts are accurately summarized in the two decisions of the Court of Appeals (App. A and App. D), it may be helpful to emphasize certain matters essential to an understanding of the case.

The litigation commenced with a complaint filed by the Petitioner, Clarion Corporation, against American Home Products Corporation and Lehman Brothers, the gist of which was that Petitioner claimed a "finder's fee" because of its services in bringing about the acquisition of Ecko Products Company by American Home Products.

On the eve of trial, in April 1970, the parties entered into an oral agreement to settle the case;[1] the trial court was informed

1. By the terms of the settlement, Petitioner was to receive an initial payment of $35,000 plus thirteen additional installments of $35,000 each.

of this agreement and, with the parties' assent, dismissed the cause without prejudice. When the final settlement documents were completed, Petitioner declined to execute them, not because of any disagreement as to their terms, but because it refused to agree to any procedure for the payment to its atttorneys, out of the initial settlement proceeds, of the balance due them for fees and expenses.

Petitioner's attorneys, here Respondents, filed notices of attorneys' liens pursuant to the applicable Illinois statute, and the trial court, on the motion of American Home Products and Lehman Brothers, reinstated the cause and dismissed it with prejudice on February 8, 1971. Petitioner did not appeal from that order of dismissal. Thereafter, the trial court adjudicated the attorneys' lien, Petitioner appealed from that determination, and the Court of Appeals affirmed. 464 F. 2d 444 (1972) (App. D).

After remand following the Court of Appeals decision of June 30, 1972, Respondent attorneys, through their counsel, presented a motion to the District Court asking for relief under Rule 70 of the Federal Rules of Civil Procedure. That motion recited the following: 1) the entry of the District Court's order of March 16, 1971 adjudicating the lien and directing compliance by the execution and exchange of the required settlement documents and directing Petitioner to pay the attorneys the sum of $17,707.44; 2) the affirmance of that order on appeal and the denial of rehearing by the Court of Appeals; 3) the fact that Petitioner had not sought review by the United States Supreme Court; 4) the return to the District Court of the mandate of the Court of Appeals; 5) the sending of a letter to Petitioner, under date of December 1, 1972, requesting payment of the adjudicated sum, plus interest and costs, and the fact that Petitioner did not respond; 6) a calculation of the total amount due, including interest and costs, in the sum of $20,428.10 as of February 12, 1973; and 7) a statement that the settlement proceeds were within the district in the possession of American Home Products Corp. or its attorneys.

On the basis of these recitations, the trial court was asked to enter a judgment as follows:

> A. Divesting from Petitioner and those defendants, if any, claiming title, the title of so much of the settlement proceeds as would satisfy the amount of the attorneys' fees, disbursements, interest thereon and costs and vesting title in and to movants.
>
> B. Ordering that a Writ of Execution issue from the clerk of the court for the purposes of enforcing the judgment.

In opposition to this motion, Petitioner filed a document entitled "Clarion's Response to Motion Seeking to Attach an Unexecuted Settlement." The gist of that response was an assertion that the attorneys could not validly reach any of the settlement proceeds "unless Clarion consummates and executes a settlement." In addition, Clarion urged the trial judge to disqualify himself by reason of his alleged business connections with a Lehman partners and raised questions about "tampering with crucial evidence" by court personnel.

With these matters before it, the District Court entered a judgment dated March 5, 1973, finding that its order of March 16, 1971 adjudicating the attorneys' lien had been affirmed on appeal; that, despite the willingness of the other parties to do so, Petitioner had failed and refused to comply with the March 16, 1971 order; that, including interest and costs, there was owing to the attorneys the sum of $20,486.21; and that, to carry out the terms of that order and the mandate of the Court of Appeals, title to the amount of $20,486.21 should be divested from Petitioner and all defendants and vested in the attorneys.

The judgment provided as follows:

> A. Plaintiff, The Clarion Corporation, and all defendants herein are hereby divested of and from any and all right, title and interest in and to the sum of $20,486.21, presently in the hands of defendant, American Home Prod-

ucts Corporation, in this district, and title thereto is hereby vested in said attorneys, Cotton, Watt, Jones, King & Bowlus.

B. Defendant, American Home Products Corporation shall deduct the sum of $20,486.21, plus costs and interest to the date of actual payment thereof to said attorneys from the initial $35,000.00 installment payment to be made to plaintiff under the settlement previously reached between plaintiff and defendants herein, and such amount actually paid by said defendant, American Home Products Corporation, shall be credited against the amount of said initial installment.

C. Said attorneys, Cotton, Watt, Jones, King & Bowlus, have and recover of defendant, American Home Products Corporation, the sum of $20,486.21, plus costs in this Court, execution to issue therefor.

Petitioner appealed from the March 5, 1973 judgment; it also appealed from the District Court's order, entered February 5, 1973, denying its motion to vacate the judgment of dismissal with prejudice entered on February 8, 1971.

The Court of Appeals affirmed the District Court on April 2, 1974, 494 F. 2d 860 (App. A). It denied a petition for rehearing on May 17, 1974 (App. B).

ARGUMENT.

The Petition for a Writ of Certiorari should be denied for the following reasons:

1. The Petition wholly fails to meet the requirements of Rule 23 of the Rules of this Court. It is a confused and confusing mixture of fact, opinion, and fancy, and it does not state with clarity a single reason why this Court should grant review. Moreover, it is obviously not in compliance with the general requirements of Rule 40 that briefs be "free from burdensome, irrelevant, immaterial, and scandalous matter."

2. The decision of the Court of Appeals is correct. That Court reviewed with obvious care the record and the "great volume of documents" filed by Petitioner. Although it expressed its difficulty in attempting to determine the legal basis on which Petitioner sought to overturn the orders of the District Court, it concluded that there were apparently two grounds: 1) "the client's consent [to the settlement] was given without complete knowledge of the facts;" and 2) "the attorneys' lien is conditioned upon the settlement and if one falls so must the other." 494 F. 2d 860, 863 (App. A, p. 6).

With respect to the first contention, the Court found that Paul Klein, Petitioner's President, "was fully informed and well-advised." 494 F. 2d 860, 865 (App. A, p. 11). Moreover, it could find nothing in the record or in any of the materials filed by Petitioner tending "to show that the settlement was procured by fraud." 494 F. 2d 860, 865 (App. A, p. 10).

As to the second, it is beyond question that Petitioner is seeking to relitigate matters previously decided by the District Court and affirmed by the Court of Appeals in its first decision. 464 F. 2d 444 (1972) (App. D). That decision conclusively settled the propriety of the trial court's adjudication of the attorneys' lien. All that conceivably remained open for review was the trial court's resort to Rule 70 of the Federal Rules of Civil Procedure to satisfy the lien. The language of Rule 70 covers the state of facts presented here. The Court of Appeals found no grounds for questioning the trial court's order under Rule 70, and Petitioner has produced nothing in his lengthy Petition casting any doubt on the application of the Rule. All Petitioner has said is that the attorneys' lien statute and Rule 70 cannot be used to reach "unrealized proceeds of an uncompleted settlement." (Petition, pp. 27-28.)

The answer to that contention is simple, as the Court of Appeals has shown. Petitioner accepted a voluntary settlement, which he cannot repudiate and which can be enforced. As a matter of fact, Petitioner has conceded that he wants to accept the proceeds of the settlement (without paying his attorneys for the services they rendered in making the settlement possible), so that, with the proceeds in hand, he can hire new attorneys to seek to overturn the settlement. (App. D, p. 9.)

Under these circumstances, given the express language of Rule 70, the courts below were surely justified in their view that it could properly be used to reach the settlement proceeds.

CONCLUSION.

Petitioner has written a long and confusing document which charges a conspiracy among the trial judge, one or more of Petitioner's former attorneys who are now sitting on the District Court or the Court of Appeals, all of the other former attorneys, and, in effect, the Chicago Bar in general. What ultimately emerges, however, as the Court of Appeals noted, 494 F. 2d 860, 865 (App. A, p. 11), is a complaint "that the strategy of the case was mishandled."

This view, embellished with ever-expanding allegations of conspiracy, Petitioner has argued—with a remarkable absence of facts—to the District Court and twice to the Court of Appeals for the Seventh Circuit. Four judges of that Court and two judges sitting there by designation have heard Paul Klein, Petitioner's President; not one of them found merit in what he has to say.[2]

2. In fact, on the basis of its review of the record, the Court of Appeals concluded that "Klein's course of action since the dismissal of the case on February 8, 1971 . . . and since our opinion in 464 F. 2d 444 . . . has been frivolous and obstructive and has caused a shameful waste of judicial manpower." 494 F. 2d 860, 865 (App. A, p. 11). It therefore assessed a penalty against Clarion Corporation pursuant to the provisions of Rule 38 of the Federal Rules of Appellate Procedure.

The Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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